

1 Guido Saveri (Cal. Bar No. 22349)  
2 guido@saveri.com  
3 R. Alexander Saveri (Cal. Bar No. 173102)  
4 rick@saveri.com  
5 Geoffrey C. Rushing (Cal. Bar No. 126910)  
6 grushing@saveri.com  
7 Cadio Zirpoli (Cal. Bar No. 179108)  
8 cadio@saveri.com  
9 Travis Manfredi (Cal. Bar No. 281779)  
10 travis@saveri.com  
11 SAVERI & SAVERI, INC.  
12 706 Sansome Street  
13 San Francisco, CA 94111  
14 Telephone: (415) 217-6810  
15 Facsimile: (415) 217-6813

16 Eric B. Fastiff (Cal. Bar No. 182260)  
17 efastiff@lchb.com  
18 Brendan P. Glackin (Cal. Bar No. 199643)  
19 bglackin@lchb.com  
20 Marc A. Pilotin (Cal. Bar No. 266369)  
21 mpilotin@lchb.com  
22 LIEFF, CABRASER, HEIMANN &  
23 BERNSTEIN, LLP  
24 275 Battery Street, 29th Floor  
25 San Francisco, CA 94111-3339  
26 Telephone: (415) 956-1000  
27 Facsimile: (415) 956-1008

28 *Counsel for Direct Purchaser Plaintiffs*

16 *Chairman of the Executive Committee  
17 for the Direct Purchaser Plaintiffs  
18 [additional counsel on signature page]*

19  
20 UNITED STATES DISTRICT COURT  
21  
22 NORTHERN DISTRICT OF CALIFORNIA  
23  
24 SAN FRANCISCO DIVISION

25 IN RE: OPTICAL DISK DRIVE (ODD)  
26 ANTITRUST LITIGATION

27 This Document Relates to:  
28 DIRECT AND INDIRECT PURCHASER  
ACTIONS

29 Case No. 3:10-MD-02143 RS

30 MDL No. 2143

31 **DIRECT AND INDIRECT PURCHASER  
32 PLAINTIFFS' MEMORANDUM OF POINTS  
33 AND AUTHORITIES IN OPPOSITION TO  
34 DEFENDANTS' ADMINISTRATIVE  
35 MOTION TO EXTEND TIME**

36 Date: TBD

37 Time: TBD

38 Courtroom: 3, 17th Floor

39 Judge: The Honorable Richard Seeborg

1 Defendants' Administrative Motion to Extend Time should be denied.<sup>1</sup> The Court  
 2 already set at seven days Defendants' date to reply—if at all—during the February 7, 2014, case  
 3 management conference. The Court stated that one week was reasonable, and Defendants did not  
 4 argue otherwise. Defendants now seek an open-ended extension: they propose to meet and  
 5 confer *in March* about a timetable for submitting a reply in support of their “motions to strike”  
 6 Plaintiffs’ expert reports, and then file a plan or proposal for more briefing.

7 In its order of December 20, 2013, the Court “strongly discouraged” Defendants from  
 8 even filing a reply, correctly observing that the “motions to strike are effectively evidentiary  
 9 objections” and that “ordinary briefing limits have already been extended to a generous degree.”  
 10 Dkt. 1084. As explained in Direct Purchaser Plaintiffs’ Opposition to Defendants’ “motion to  
 11 strike,” to call the motions to strike disguised additional briefs on class certification is to do a  
 12 disservice to the concept of a disguise. Indeed, Defendants openly budget their opposition to  
 13 class certification between the “motions to strike” and their opposition briefs, “[t]o present their  
 14 arguments efficiently and avoid duplication.” Dkt. 1130 at 2 (quoting “motion to strike” at n.3).  
 15 Accordingly, the “motions to strike” demand that the Court apply the “rigorous analysis” standard  
 16 of Rule 23 of the Federal Rules of Civil Procedure, paying only lip service to *Daubert* and Rule  
 17 702 of the Federal Rules of Evidence. *Id.*

18 Defendants’ new request for an open-ended schedule to file the “discouraged” reply  
 19 simply reinforces what they really want: a fourth round of briefing on class certification, i.e. a  
 20 sur-reply not authorized either by the Local Rules or this Court’s scheduling orders. Defendants  
 21 complain in their administrative motion that Plaintiffs filed “an extraordinary amount of reply  
 22 material” including “70 pages of briefing on class certification.” Dkt. 1139 at 1. But this is  
 23 simply what Plaintiffs were permitted to do by the Court’s order, which also expanded  
 24 Defendants’ opposition briefs. Defendants do not need any extra time to respond to Plaintiffs’  
 25 reply papers, because *they are not supposed to respond to them*. The Local Rules recognize—and  
 26 legislate—that the party carrying the burden and who is obligated to argue first has the balancing  
 27 opportunity to also argue last. Defendants want a four-round format that permits them to argue

28 <sup>1</sup> This brief is filed on behalf of both Direct and Indirect Purchaser Plaintiffs.

twice (getting in the last word) in response to a motion; but that preference is not the rule, and it will not be the rule when, for instance, Defendants move for summary judgment and Plaintiffs will have one and only one opportunity to respond.<sup>2</sup>

Defendants try to disguise their tactics by referencing Local Rule 7-3(d)(1), claiming that they also need additional time to file an objection to evidence submitted in reply by Plaintiffs. However, they omit to mention that Local Rule 7-3(d)(1) also requires that any such objection “may not exceed 5 pages of text” and “may not include further argument on the motion.” Defendants do not need any extra time, let alone an extra month, to write a simple 5-page objection that does not attempt to further argue class certification. Their reason for seeking additional time is to do something that is—once again—expressly prohibited by the Local Rules.

Respectfully submitted,

Dated: February 24, 2014

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

By: \_\_\_\_\_ /s/ *Brendan P. Glackin*  
Brendan P. Glackin

Eric B. Fastiff (State Bar No. 182260)  
Brendan P. Glackin (State Bar No. 199643)  
Marc A. Pilotin (State Bar No. 266369)  
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP  
275 Battery Street, 29th Floor  
San Francisco, CA 94111-3339  
Telephone: (415) 956-1000  
Facsimile: (415) 956-1008

*Counsel for Direct Purchaser Plaintiffs*

<sup>2</sup> Defendants darkly note that Plaintiffs “did not produce the backup materials for their new expert reports . . . until Friday afternoon, February 21, 2014.” Dkt. 1139 at 1. This is misleading. Plaintiffs served the material exactly on the timetable required by the Court. Dkt. 606 at 3-4. Defendants also complain that Plaintiffs filed 46 pages in opposition to the “motions to strike” but that is fewer than the 47 pages of those motions themselves, and included Plaintiffs’ procedural objections in addition to their responses to Defendants’ additional arguments in opposition to class certification. Defendants even attempt the cheap shot of claiming Plaintiffs filed “At the end of the day on February 18, 2014 . . .”, because Plaintiffs completed their e-filings at around 6:00 p.m. Dkt. 1139 at 1.

1 SAVERI & SAVERI, INC.  
2

3 By: /s/ Guido Saveri  
4 Guido Saveri

5 Guido Saveri (State Bar No. 22349)  
6 guido@saveri.com  
7 R. Alexander Saveri (State Bar No. 173102)  
8 rick@saveri.com  
9 Geoffrey C. Rushing (State Bar No. 126910)  
10 crushing@saveri.com  
11 Cadio Zirpoli (State Bar No. 179108)  
12 cadio@saveri.com  
13 Travis L. Manfredi (State Bar No. 281779)  
14 travis@saveri.com  
15 SAVERI & SAVERI, INC.  
16 706 Sansome Street  
17 San Francisco, CA 94111  
18 Telephone: (415) 217-6810  
19 Facsimile: (415) 217-6813

20  
21 *Chairman of the Executive Committee*  
22 *for the Direct Purchaser Plaintiffs*

23 HAGENS BERMAN SOBOL SHAPIRO LLP  
24

25 By /s/ Jeff D. Friedman  
26 Jeff D. Friedman

27 Shana E. Scarlett (217895)  
28 715 Hearst Avenue, Suite 202  
Berkeley, CA 94710  
Telephone: (510) 725-3000  
Facsimile: (510) 725-3001  
jefff@hbsslaw.com  
shanas@hbsslaw.com

29 Steve W. Berman (*Pro Hac Vice*)  
30 George W. Sampson (*Pro Hac Vice*)  
31 HAGENS BERMAN SOBOL SHAPIRO LLP  
32 1918 Eighth Avenue, Suite 3300  
33 Seattle, WA 98101  
34 Telephone: (206) 623-7292  
35 Facsimile: (206) 623-0594  
36 steve@hbsslaw.com  
37 george@hbsslaw.com

Lee Gordon SBN (174168)  
HAGENS BERMAN SOBOL SHAPIRO LLP  
301 North Lake Ave., Suite 203  
Pasadena, CA 91101  
Telephone: (213) 330-7150  
Facsimile: (213) 330-7152  
lee@hbsslaw.com

*Interim Lead Counsel for Indirect  
Purchaser Plaintiffs*

## **ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the other signatory above.

Dated: February 24, 2014

By: \_\_\_\_\_ */s/ Brendan P. Glackin*  
Brendan Glackin